UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESEARCH SERVICE
ANIMAL DISEASE ERADICATION BRANCH
Washington 25, D. C.

February 18, 1955



ADE BRANCH MEMORANDUM 508.23

To : ADE Field Activities Stations

From : Chief of Branch

Subject: Policy Regarding Indemnity for State-Owned Reactors

The question has been raised regarding information relative to legal restrictions on the payment of indemnities to State-owned institutions for cattle destroyed because of brucellosis or tuberculosis. Quoted below are pertenant portions of a Branch letter which sets forth the policy which will be followed.

> "There is no law or regulation at the present time which deals specifically with the payment of indemnities to State-owned institutions for cattle destroyed because of brucellosis or tuberculosis, except as set forth in 9 CFR, Part 51, Sections 51.2 and 51.9 (g), as amended (BAI Order 375, Revised, Amendment 1). The only legal statement available on this subject is an opinion handed down by the Solicitor of the U. S. Department of Agriculture on January 16, 1922, which affects tuberculous cattle only. In this statement, the Solicitor ruled that in his opinion, the payment of indemnities to State-owned institutions for the destruction of its tuberculous cattle is unauthorized by law. We have consulted with attorneys in the office of the Solicitor and have been informed that this opinion has not been superseded by any later opinions and is, therefore, still valid.
>
> "This opinion, however, applies only to indemnity payments which by law must be made in cooperation with, and supplementary to, payments made by the State. In the case of brucellosis, the law has recently been changed to permit the Federal Government to pay indemnity without regard to any supplementary payment by the State. Consequently, the premise of the above quoted Solicitor's opinion is no longer applicable to indemnity payments for brucellosis. While there is no longer any legal barrier to the payment of brucellosis indemnity to State-owned institutions, it has been determined that the Branch will continue the policy that Federal indemnity will not be paid for reactors owned by institutions receiving State support or State-owned institutions.
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> We are enclosing a copy of that portion of the Solicitor's legal statement which we believe will be of interest to you, ..."

Excerpts from Legal Opinion Given January 16, 1922
by the Solicitor, U. S. Department of Agriculture
on
Payment of Indemnities to State-owned Institutions
for Cattle Destroyed because of Tuberculosis

It will be noted that under the Act all payments to be made by the Department are required to be made in cooperation with, and supplementary to, payments to be made by the State, Territory, County or Municipality, as the case may be, to "owners" of tuberculous livestock that may be destroyed. While there is no provision of the law specifically prohibiting the Department from reimbursing a State as an owner, where the State is cooperating with the Department, it is obvious that a State cannot pay or reimburse itself for the loss of animals owned by it and for the same reason that no man can contract with himself, and, therefore, any payment the Department might make in the premises would not be supplementary to one made by the State. It is clear, therefore, that the Department is not authorized by the law to reimburse a State as an owner.

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Answering specifically your inquiry in this matter, you are informed that I am of the opinion that where animals owned solely by a county or municipality are condemned and slaughtered for tuberculosis as a result of cooperative work carried on between your Bureau and the State, independently of any arrangement or agreement with the county or municipality involved, compensation may be made within the statutory limits by the Department to the county or municipality for the loss of its animals in the event the State pays its proportionate share. And compensation may be made in the same way under like conditions to townships where townships stand in the same relation to the State as counties.

You also ask whether the Department may pay indemnities for tuberculous cattle owned by a State institution which receives no State appropriation for its support or receives State appropriation for only part of its support. If the institution having possession of the cattle is owned by the State, it necessarily follows that cattle belonging to it are also owned by the State. The fact that the institution is self-supporting does not divest the State of its right or title to property belonging to the institution. In such instances, property acquired by the institution is property acquired by the State. I am of the opinion, therefore, that payment of indemnities to State-owned institutions for the destruction of its tuberculous animals is unauthorized.

Very truly yours,

/s/ R. W. Williams
Solicitor